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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92059099
Party	Defendant Dog Haus LLC
Correspondence Address	CHET H OLSEN` 9696 CULVER BLVD, SUITE 301 CULVER CITY, CA 90232 UNITED STATES
Submission	Answer and Counterclaim
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Signature	/Walter M. Crandall/
Date	07/17/2014
Attachments	92059099 DOG HAUS Answer and Counterclaim.pdf(146870 bytes)

Registration Subject to the filing

Registration No	4336555	Registration date	05/14/2013
Registrant	CARNEVOR, INC. 610 AMIGOS DRIVE, UNIT C, REDLANDS, CA 92373 UNITED STATES		

Goods/Services Subject to the filing

Class 043. First Use: 2012/08/01 First Use In Commerce: 2012/08/23
All goods and services in the class are requested, namely: Bar services; Restaurant services

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CARNEVOR INC.,

Petitioner,

Cancellation No.: 92059099

v.

DOG HAUS, LLC,

Registrant/Respondent.

In the matter of the registration of:

Registrant's Mark:	DOG HAUS
Registrant's Services:	Café and restaurant services; catering services; restaurant take out services.
Registration No.:	4326591
International Class:	43

**REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION, AFFIRMATIVE
DEFENSES, AND COUNTERCLAIM**

Registrant Dog Haus, LLC ("Registrant"), denies that Petitioner Carnevor, Inc. ("Petitioner"), has been or will be damaged by Registration No. 4326591, and further responds to the correspondingly numbered paragraphs in the Petition for Cancellation as follows:

1. Registrant is without sufficient knowledge to form a belief as to the truth of the allegations of paragraph 1 of the Petition for Cancellation and consequently denies the same, leaving Petitioner to strict proof thereof.

2. Registrant is without sufficient knowledge to form a belief as to the truth of the allegations of paragraph 2 of the Petition for Cancellation and consequently denies the same, leaving Petitioner to strict proof thereof.

3. Registrant is without sufficient knowledge to form a belief as to the truth of the allegations of paragraph 3 of the Petition for Cancellation and consequently denies the same, leaving Petitioner to strict proof thereof.

4. Registrant admits that United States Trademark Registration No. 4336555 is for the mark HUND & BIER HAUS, but is without sufficient knowledge to form a belief as to the truth of the remaining allegations of paragraph 4 of the Petition for Cancellation and consequently denies the same, leaving Petitioner to strict proof thereof.

5. Registrant is without sufficient knowledge to form a belief as to the truth of the allegations of paragraph 5 of the Petition for Cancellation and consequently denies the same, leaving Petitioner to strict proof thereof.

6. Registrant is without sufficient knowledge to form a belief as to the truth of the allegations of paragraph 6 of the Petition for Cancellation and consequently denies the same, leaving Petitioner to strict proof thereof.

7. Registrant is without sufficient knowledge to form a belief as to the truth of the allegations of paragraph 7 of the Petition for Cancellation and consequently denies the same, leaving Petitioner to strict proof thereof.

8. Registrant is without sufficient knowledge to form a belief as to the truth of the allegations of paragraph 8 of the Petition for Cancellation and consequently denies the same, leaving Petitioner to strict proof thereof.

9. Registrant denies the allegations of paragraph 9 of the Petition for Cancellation.

10. Registrant denies the allegations of paragraph 10 of the Petition for Cancellation.

11. Registrant admits the allegations of paragraph 11 of the Petition for Cancellation.

12. Registrant admits that it filed on August 02, 2011, United States Trademark Application Serial No. 85387667 for the mark DOG HAUS and that Registrant used the mark at least as early as October 2010 in connection with café and restaurant services; catering services; restaurant take out services. Registrant is without sufficient knowledge to form a belief as to the truth of the remaining allegations of paragraph 12 and therefore denies the same.

13. Registrant admits that its attorney declared that he is properly authorized to execute the application on behalf of applicant; that he believed the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application was to be filed under 15 U.S.C. Section 1051(b), he believed applicant to be entitled to

use such mark in commerce, to the best of his knowledge and believed no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive, and that all statements were made of his own knowledge were true, and that all statements made on information and belief were believed to be true. Registrant denies the remaining allegations of paragraph 13 of the Petition for Cancellation.

14. Registrant admits that with United States Trademark Application Serial No. 85387667, Registrant filed a specimen that included an advertisement from its web page displaying the mark which was a screenshot taken on August 2, 2011 from the doghausdogs.com website, the specimen describes Registrant's business, that Registrant is home of the grand slam, little leaguer dogs, the freiburger, the best of the wurst, that the specimen advertised a new sausage sandwich, and that Registrant invited its customers. Registrant denies the remaining allegations of paragraph 14 of the Petition for Cancellation.

15. Registrant admits the allegations of paragraph 15 of the Petition for Cancellation, except Registrant is without sufficient knowledge to form a belief as to the truth of the statement that Serial Nos. 85119201 and 85278016 have filing dates that precede Registrant's filing date and therefore denies the same.

16. Registrant admits the allegations of paragraph 16 of the Petition for Cancellation.

17. Registrant admits Registrant's mark issued on the Principal Register for the recited goods on April 30, 2013, but otherwise denies the allegations of paragraph 17 of the Petition for Cancellation.

18. Registrant admits the allegations of paragraph 18 of the Petition for Cancellation, except Registrant is without sufficient knowledge to form a belief as to the truth of the allegation relating to any date of receipt of a letter by Petitioner and therefore denies the same.

19. Registrant admits that attorneys for the parties have communicated in some limited fashion relating to the dispute between the parties, but otherwise denies the allegations of paragraph 19 of the Petition for Cancellation.

20. Registrant is without sufficient knowledge to form a belief as to the truth of the allegations of paragraph 20 of the Petition for Cancellation and consequently denies the same, leaving Petitioner to strict proof thereof, except Registrant admits that Petitioner has used the designations HUNDEHAUS and HUND & BEER HOUSE in connection with a business.

21. Registrant restates and realleges, and incorporates by reference, as though fully set forth herein, its answers to the allegations contained in all prior and subsequent paragraphs.

22. Registrant denies the allegations of paragraph 22 of the Petition for Cancellation.

23. Registrant denies the allegations of paragraph 23 of the Petition for Cancellation.

24. Paragraph 24 of the Petition for Cancellation is primarily not an allegation of fact but rather presents Petitioner's position regarding statements of law. However, to the extent paragraph 24 contains any allegation of fact, Registrant denies the allegations of paragraph 24 of the Petition for Cancellation.

25. Registrant is without sufficient knowledge to form a belief as to the truth of the allegations of paragraph 25 of the Petition for Cancellation and consequently denies the same, leaving Petitioner to strict proof thereof.

26. Registrant is without sufficient knowledge to form a belief as to the truth of the allegations of paragraph 26 of the Petition for Cancellation and consequently denies the same, leaving Petitioner to strict proof thereof.

27. Registrant is without sufficient knowledge to form a belief as to the truth of the allegations of paragraph 27 of the Petition for Cancellation and consequently denies the same, leaving Petitioner to strict proof thereof.

28. Registrant is without sufficient knowledge to form a belief as to the truth of the allegations of paragraph 28 of the Petition for Cancellation and consequently denies the same, leaving Petitioner to strict proof thereof.

29. Registrant is without sufficient knowledge to form a belief as to the truth of the allegations of paragraph 29 of the Petition for Cancellation and consequently denies the same, leaving Petitioner to strict proof thereof.

30. Paragraph 30 of the Petition for Cancellation is primarily not an allegation of fact but rather presents Petitioner's position regarding statements of law. However,

to the extent paragraph 30 contains any allegation of fact, Registrant denies the allegations of paragraph 30 of the Petition for Cancellation.

31. Paragraph 31 of the Petition for Cancellation is primarily not an allegation of fact but rather presents Petitioner's position regarding statements of law. However, to the extent paragraph 31 contains any allegation of fact, Registrant denies the allegations of paragraph 31 of the Petition for Cancellation.

32. Paragraph 32 of the Petition for Cancellation is primarily not an allegation of fact but rather presents Petitioner's position regarding statements of law. However, to the extent paragraph 32 contains any allegation of fact, Registrant denies the allegations of paragraph 32 of the Petition for Cancellation.

33. Paragraph 33 of the Petition for Cancellation is primarily not an allegation of fact but rather presents Petitioner's position regarding statements of law. However, to the extent paragraph 33 contains any allegation of fact, Registrant denies the allegations of paragraph 33 of the Petition for Cancellation.

34. Paragraph 34 of the Petition for Cancellation is primarily not an allegation of fact but rather presents Petitioner's position regarding statements of law. However, to the extent paragraph 34 contains any allegation of fact, Registrant denies the allegations of paragraph 34 of the Petition for Cancellation.

35. Registrant admits that there is a likelihood of confusion between Registrant's mark and Petitioner's mark or marks of which Registrant's mark has priority, but otherwise denies the allegations of Paragraph 35 of the Petition for Cancellation.

36. Registrant denies the allegations of paragraph 36 of the Petition for Cancellation.

37. Paragraph 37 of the Petition for Cancellation is primarily not an allegation of fact but rather presents Petitioner's position regarding statements of law. However, to the extent paragraph 37 contains any allegation of fact, Registrant denies the allegations of paragraph 37 of the Petition for Cancellation.

38. Registrant denies the allegations of paragraph 38 (erroneously numbered as a second paragraph 36) of the Petition for Cancellation.

39. (Erroneously numbered as a second paragraph 37) Registrant restates and realleges, and incorporates by reference, as though fully set forth herein, its answers to the allegations contained in all prior and subsequent paragraphs.

40. (Erroneously numbered as paragraph 38) Registrant admits that application 85387667 included the declaration provided by Petitioner. Registrant denies Petitioner's allegation that the registration was obtained fraudulently and denies all other allegations of Petitioner's paragraph 40 of the Petition for Cancellation.

41. (Erroneously numbered as paragraph 39) Registrant denies the allegations of paragraph 41 of the Petition for Cancellation.

42. (Erroneously numbered as paragraph 40) Registrant admits that the Declaration referred to in the erroneously numbered paragraph 38 was made by its Respondent and that the USPTO granted said registration. Registrant denies the remaining allegations of paragraph 42 of the Petition for Cancellation.

43. (Erroneously numbered as paragraph 41) Registrant admits that it submitted the specimen as Registrant has specified above in paragraph 14. Registrant denies all remaining allegations of paragraph 43 of the Petition for Cancellation.

44. (Erroneously numbered as paragraph 42) Registrant denies the allegations of paragraph 44 of the Petition for Cancellation.

45. (Erroneously numbered as paragraph 43) Registrant admits that there is a likelihood of confusion of Petitioner's infringing use of Registrant's marks and that Registrant's mark has priority. Registrant denies the remaining allegations of paragraph 45 of the Petition for Cancellation.

46. (Erroneously numbered as paragraph 44) Paragraph 46 of the Petition for Cancellation is primarily not an allegation of fact but rather presents Petitioner's position regarding statements of law. However, to the extent paragraph 46 contains any allegation of fact, Registrant denies the allegations of paragraph 46 of the Petition for Cancellation.

47. (Erroneously numbered as paragraph 45) Registrant denies the allegations of paragraph 47 of the Petition for Cancellation.

AFFIRMATIVE DEFENSES

First Affirmative Defense

48. Petitioner fails to state a claim upon which relief can be granted.

Second Affirmative Defense

49. As a result of Registrant's continuous use of DOG HAUS ("the Mark") since the time of Registrant's adoption thereof, the Mark has developed significant

goodwill among the consuming public and consumer acceptance of the services offered by Registrant in conjunction with the Mark. Assuming arguendo that the mark DOG HAUS is held to be descriptive, which Registrant denies, then such goodwill and widespread usage has caused the Mark to acquire distinctiveness through secondary meaning with respect to Registrant, and caused the Mark to become a valuable asset of Registrant.

Third Affirmative Defense

50. Registrant has been using the Mark and developing consumer recognition and goodwill therein since at least October 1, 2010, such as being open, notorious and known to Petitioner and such knowledge, in turn, being known to Registrant. During this time, Petitioner failed to take meaningful action to assert the claims on which it bases this Petition for Cancellation, on which inaction Registrant has relied to its detriment. Petitioner's claims are consequently barred by the doctrines of laches, acquiescence and estoppel.

Fourth Affirmative Defense

51. Petitioner has unclean hands by virtue of the measures taken by Petitioner to intentionally and wrongfully divert Registrant's consumers to Petitioner's restaurants through a campaign meant to cause consumer confusion, including, inter alia, by the use of nearly identical terms as Registrant's Mark.

COUNTERCLAIM TO CANCEL REGISTRATION

52. Registrant repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

53. Registrant hereby seeks cancellation of Petitioner's Registration (Registration No. 4336555) issued May 14, 2013, for the mark "HUND & BIER HAUS" (words only) in International Class 043 for the application filed on December 17, 2012, which subsists on the Supplemental Register.

54. Registrant is the owner of United States Trademark Certificate of Registration No. 4326591 for the mark "DOG HAUS" registered on April 30, 2013 in connection with "café and restaurant services, catering services, and restaurant take out services" ("Registrant's Registration). Registrant's Registration remains valid and subsisting on the Principal Register.

55. Registrant is also the owner of United States Trademark Certificate of Registration No. 4202507 for the mark  registered on September 4, 2012 in connection with "Restaurant and café services; restaurant and catering services; restaurant services, namely, providing food and beverages for consumption on and off the premises; Take-out restaurant services" ("Registrant's Logo Registration). Registrant's Logo Registration remains valid and subsisting on the Principal Register.

56. Petitioner's registration of HUND & BIER HAUS infringes upon, and creates a likelihood of confusion among consumers regarding Registrant's prior

registrations for DOG HAUS and  .

57. In September of 2012, Dog Haus became aware that Petitioner submitted a service mark application for "Hundehaus" (U.S. Serial No. 85459723).

58. “Hundehaus” translates from German into English as “Dog House” which is pronounced identical to Registrant’s restaurants’ name “Dog Haus”.

59. Through its attorneys, Registrant contacted the Petitioner and requested that it abandon its trademark application for the term HundeHaus because it translates to Dog House in English.

60. Registrant also demanded that Petitioner cease and desist use of the name Hundehaus in connection with any restaurant business.

61. Petitioner expressed an interest in reaching an agreement with Registrant and offered to change its name to Hund Bier Haus.

62. Registrant rejected the offer on the grounds that Hund Bier Haus is so similar to the Dog Haus Marks that similar names would cause confusion.

63. Petitioner then filed its trademark application for HUND & BIER HAUS.

64. The use by Petitioner of such colorable imitations of Registrant’s Marks is likely to cause confusion, mistake, or deception, as those encountering Petitioner’s business may mistakenly assume that Petitioner’s business is in some way sponsored, endorsed, approved by, or connected with Registrant when in fact it is not and therefore Registrant has been, is being, and will be damaged thereby.

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Wherefore, Registrant respectfully requests:

- (a) Petitioner's Petition for Cancellation be denied; and,
- (b) that Registration No. 4336555 be cancelled.

Dated: July 17, 2014

Respectfully submitted,

/Walter M. Crandall/
WALTER M. CRANDALL
9696 Culver Boulevard, Suite 301
Culver City, California 90232

Attorneys for Registrant,
Dog Haus LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION is being served upon counsel for Petitioner by deposit of same in the United States Mail, first class postage prepaid, in an envelope addressed to:

STEPHEN L ANDERSON
ANDERSON & ASSOCIATES
27247 MADISON AVENUE, SUITE 120
TEMECULA, CA 92590

on July 17, 2014.

/Walter M. Crandall/
Walter M. Crandall